

JUDGE SULLIVAN

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK

'08 CIV 3805

ILANA DAYAN ZADIK  
Ruth 25, Haifa,  
Israel, 34404,*Plaintiff*

: Civil Action

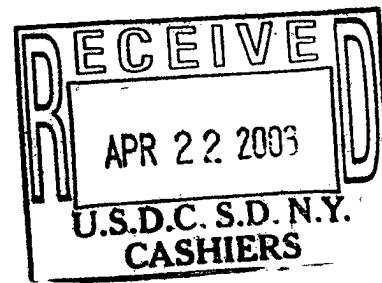
: No. 08 Civ 3805

v.

AGORA GALLERY  
530 West 25<sup>th</sup> Street, New York, NY 10001

: JURY TRIAL DEMANDED

and

ARIEL KAHANA  
733 Amsterdam Avenue, New York, NY 10025*Defendant(s)*COMPLAINT

Plaintiff Ilana Dayan Zadik ("Zadik"), by and through her undersigned attorneys, sets forth and alleges the following causes of action:

1. Defendant Agora Gallery ("Agora"), breached the contract Zadik had with Agora by discarding, delivering to the Salvation Army, misappropriating for their employees' personal use, and otherwise causing the loss of or damages to fifteen (15) paintings that Zadik created and entrusted to Agora.

2. Zadik learned that Agora had taken such actions only when she was contacted by an individual who had bought one of her discarded paintings from the Salvation Army for approximately \$50.

3. When Zadik contacted Angela Di Bello (“Di Bello”), the Director of the gallery, to inform her of this Di Bello did not seem remotely surprised. Instead Di Bello requested that Zadik send her an email and indicated that she would send the information to the owner of the gallery, Ariel Kahana (“Kahana”).

4. Agora and its owner admitted liability by filing a claim with their insurance carrier and notifying Zadik of same. Kahana emailed Zadik on August 20, 2007 to inform her that “I have filled [sic] a claim with my insurance carrier regarding the matter of your artwork and they will contact you soon.”

#### **JURISDICTION AND VENUE**

5. This Court has jurisdiction over this action, pursuant to 28 USC § 1332(a), as the action is between a citizen and resident of Israel, and citizens of the State of New York and companies incorporated in and/or doing business in the State of New York.

6. Venue is proper in this district, pursuant to 28 USC § 1391, as it is the judicial district in which a substantial part of the events or omissions giving rise to the claims alleged in this complaint occurred. Moreover, all Defendants either reside in New York or have their principal place of business within the Southern District of New York.

#### **PARTIES**

7. Plaintiff Ilana Dayan Zadik resides at Ruth 25, Haifa, Israel, 34404 and is a citizen of Israel.

8. Upon information and belief, defendant Agora Gallery is a company incorporated in the State of New York, with its principal place of business at 530 West 25<sup>th</sup> Street, New York, NY 10001.

9. Upon information and belief, defendant Arial Kahana is a citizen and resident of the state of New York, residing at 733 Amsterdam Avenue, New York, NY 10025. Upon information and belief, Kahana is the owner of Agora Gallery.

**FACTS COMMON TO ALL CLAIMS FOR RELIEF**

10. Zadik entered into a contract with Agora on June 1, 2005. A true and correct copy of the contract is attached as Exhibit 1.

11. No reference was made in the contract to the transfer of ownership of an artist's works to the gallery upon nonpayment or, indeed, under any other circumstances.

12. The only reference in the contract to the transfer of ownership or the transfer of rights referred to the artist's portfolio, not to the works themselves.

13. Clause 2 of the contract states, "We will keep your *portfolio* (slides, CD, or photographs) for promotional purposes. We will use reasonable efforts to return your portfolio to you at the end of our representation of you; however, you acknowledge that we are under no obligation to do so." (emphasis added).

14. The definition of *portfolio*, as it applies to works of art, is "A portable case for holding material, such as loose papers, photographs, or drawings....The materials collected in such a case, especially when representative of a person's work: *a photographer's portfolio; an artist's portfolio of drawings*." See <http://www.answers.com/topic/portfolio?cat=biz-fin> (emphasis in original), attached as Exhibit 2.

15. The terms of the contract required Zadik to deliver her paintings to Agora for display at the gallery. Zadik was required to pay Agora \$10,000 to display and attempt to sell her paintings.

16. Zadik delivered 15 paintings to the gallery; of these four (4) were oil paintings ranging in value from \$18,000 to \$30,000 and eleven (11) were acrylic paintings ranging in value from \$8,500 to \$9,500.

17. Zadik delivered her paintings to Agora with the expectation that they would be displayed at the gallery and subsequently returned to her if they were unable to be sold.

18. Zadik's works of art were displayed at the gallery from November 11, 2005 to December 1, 2005.

19. In late December 2005 / early January 2006, Zadik ran into financial difficulties and was unable to pay the full amount due under the contract.

20. Angela Di Bello, the Director of Agora and Zadik's primary contact at the gallery, gave no indication that Zadik's lack of full payment would lead the gallery to discard her paintings as if they were yesterday's trash.

21. Pursuant to the shipping agreement Zadik signed on September 9, 2005, "Artwork left for more than 45 days after the exhibition pick up date, *without a written gallery authorization*, will become property of Agora Gallery." (emphasis added). A true and correct copy of the shipping agreement is attached as Exhibit 3.

22. Zadik received written gallery authorization from Di Bello to leave her artwork with Agora Gallery.

23. When Zadik indicated that she was unable to pay the full amount due under the contract, in an email dated January 14, 2006, Di Bello wrote "Try to do what you can,

it may just take a while. *In the meantime we will continue to try and sell some of the paintings.*" (emphasis added). A true and correct copy of this communication is attached as Exhibit 4.

24. Absolutely no indication was given in this email, prior or subsequent emails, or any other communications that the paintings would be discarded as a result of nonpayment.

25. It was permissible and absolutely foreseeable that Zadik would rely on the representations of Di Bello.

26. Zadik only learned that her paintings had been discarded when she received emails, dated August 9, 2007 and August 10, 2007, and then spoke with Jose Vasquez ("Vasquez") of Rizzoli International inquiring how one may purchase Zadik's paintings and the value of the painting.

27. Vasquez stated that he had purchased one of Zadik's paintings from the Salvation Army for \$50 and that he intended to sell it on Ebay.

28. When Zadik learned that her paintings had been discarded without her permission, she immediately contacted Di Bello (on August 10, 2007) by phone. Di Bello requested that Zadik send her an email and stated that she would forward the email from Zadik to the owner of the gallery, Kahana.

29. Di Bello did not express surprise that such actions had been taken by the gallery.

30. In an email dated August 20, 2007, Kahana admitted liability by stating "I have filled [sic] a claim with my insurance carrier regarding the matter of your artwork and they will contact you soon." A true and correct copy of this communication is attached as Exhibit 5.

31. Pursuant to the contract between Zadik and Agora, the artwork is insured for up to \$10,000 per piece.

32. Upon information or belief, Agora failed to notify Zadik that they would be discarding her paintings rather than returning them to her.

33. Upon information or belief, Agora failed to make any attempts to contact Zadik in order to return her paintings to her.

34. Upon information or belief, Agora failed to contact Zadik to attempt to return her paintings to her.

35. Upon information or belief, Agora failed to follow up in any meaningful manner on Zadik's partial payment of the amount due under the contract.

36. Upon information or belief, despite at least seven (7) months having passed between the date of Zadik entered into the contract and the time she discussed her financial difficulties with the gallery, Agora gave no indication that nonpayment would result in Zadik's painting being discarded.

37. When they were at the gallery, Zadik's paintings were priced at \$8,500 to \$30,000.

38. The value attributed to Zadik's paintings is appropriate. Agora felt it was appropriate to sell the paintings in their gallery for the exact amount for which Zadik is currently seeking recovery.

**FIRST CLAIM FOR RELIEF AGAINST DEFENDANTS AGORA GALLERY AND  
ARIEL KAHANA - BREACH OF CONTRACT**

39. Plaintiff repeats and realleges each of the allegations contained in paragraphs 1 - 38, as if fully set forth herein.

40. The contract that Zadik entered into with Agora did not permit the gallery to take ownership of Zadik's works or to discard them. No reference was made in the contract to the transfer of ownership of an artist's works to the gallery upon nonpayment or under any other circumstances.

41. Upon information and belief, Agora discarded or caused to be discarded many of Zadik's paintings with which Agora was entrusted.

42. Upon information and belief, Agora and Kahana misappropriated Zadik's paintings by displaying them or permitting them to be displayed at the residences of Kahana's family or friends. Such actions do not constitute reasonable efforts to return Zadik's paintings.

43. Agora gave no indication to Zadik that they had ended their representation of Zadik.

44. Agora failed to use any efforts, much less reasonable efforts, to return Zadik's paintings to her.

**SECOND CLAIM FOR RELIEF AGAINST DEFENDANTS AGORA GALLERY  
AND ARIEL KAHANA - CONVERSION**

45. Plaintiff repeats and realleges each of the allegations contained in paragraphs 1 - 44 above, as if fully set forth herein.

46. Agora and Kahana wrongly exercised dominion and control over Zadik's paintings.

47. Despite repeated requests, Agora and Kahana have failed to return and have converted at least a portion of them for their own use.

48. Defendants actions were intentional, malicious and committed with a specific intent to cause harm and a reckless disregard of Zadik's rights.

49. As a proximate result of Agora and Kahana's conversion, Zadik has been damaged in the sum of \$198,000.

50. In addition, because the acts of Agora and Kahana were intentional, fraudulent, malicious and shocking to the conscience, the Court should award punitive damages in the amount of \$3.5 million.

**THIRD CLAIM FOR RELIEF AGAINST DEFENDANTS AGORA GALLERY  
AND ARIEL KAHANA - PROMISSORY ESTOPPEL**

51. Plaintiff repeats and realleges each of the allegations contained in paragraphs 1 - 50 above, as if fully set forth herein.

52. In the alternative, each of the Defendants against whom this Third Claim is asserted is liable to Zadik under the theory of promissory estoppel as alleged herein.

53. Di Bello, the Director of Agora, assured Zadik that no detrimental actions would be taken against Zadik as a result of nonpayment, that Zadik should "[t]ry to do what you can" with respect to payment and that the gallery would "continue to try and sell some of the paintings."

54. In reliance on Di Bello's promise, Zadik continued to keep her paintings at Agora.

55. Zadik would never have continued to keep her paintings at Agora if Di Bello had not assured her that the gallery would continue to attempt to sell them.

56. Zadik's reliance on Di Bello's promise was reasonable and foreseeable. Agora knew or should have known that Zadik would rely on these promises.

57. The course of conduct between the parties was such that Zadik reasonably believed she could rely on these promises.

58. Zadik relied on Di Bello's promise to her detriment.
59. Zadik has sustained unconscionable injury by reason of her reliance on Agora's promises.

**FOURTH CLAIM FOR RELIEF AGAINST DEFENDANTS AGORA GALLERY  
AND ARIEL KAHANA - BAD FAITH**

60. Plaintiff repeats and realleges each of the allegations contained in paragraphs 1 - 59 above, as if fully set forth herein.

61. Defendants have failed to honor their obligations under the contract despite stating that a claim had been submitted to Defendants' insurance company.

62. The refusal of Defendants to respond to Zadik's demands and honor their obligations according to the terms of the contract was and remains frivolous and unfounded and constitutes bad faith.

63. Zadik is entitled to recover additional damages for the Defendants' bad faith, plus reasonable attorneys' fees and costs.

**FIFTH CLAIM FOR RELIEF AGAINST DEFENDANTS AGORA GALLERY  
AND ARIEL KAHANA - BREACH OF THE IMPLIED COVENANT  
OF GOOD FAITH AND FAIR DEALING**

64. Plaintiff repeats and realleges each of the allegations contained in paragraphs 1 - 63 above, as if fully set forth herein.

65. Implied in the contract between Agora and its artists is a covenant to act in good faith and deal fairly with the artists; that it will do nothing to interfere with the rights of those individuals and entities to receive those benefits; that it will exercise diligence, good faith, and fidelity in safeguarding the interests of the artists; and that it will deal ethically with those

individuals and will fairly and adequately inform those individuals of the nature and scope of their rights and obligations.

66. Defendants have breached the implied covenant of good faith and fair dealing by (a) failing to reimburse Zadik the value of each painting; (b) interpreting the terms and conditions of the contract in an unreasonable manner in a blatant effort to avoid providing Zadik the amount of insurance proceeds, per painting, under the contract; (c) inventing spurious grounds for avoidance of payment; and (d) compelling Zadik to initiate this litigation in order to obtain the rights and benefits to which she is clearly entitled under the contract.

67. Upon information and belief, Defendants committed the wrongful acts alleged above, all in breach of the implied covenant of good faith and fair dealing, for the purpose of willfully and consciously withholding from Zadik the rights and benefits to which she is entitled under the contract.

68. Upon information and belief, Defendants made a conscious and deliberate effort to deprive Zadik of the benefits for which she bargained.

69. Zadik has been damaged by Defendants breach of the implied covenant of good faith and fair dealing, including either by not having her paintings returned to her or by not having the full value of the paintings returned to her.

70. Upon information and belief, Defendants committed the wrongful conduct alleged herein with malice, in conscious disregard of Zadik's rights, and with intent to vex, injure and harass Zadik such as to constitute oppression, fraud or malice. In accordance with applicable law, Zadik is therefore entitled to punitive damages in an amount deemed appropriate by the Court.

**SIXTH CLAIM FOR RELIEF AGAINST DEFENDANTS AGORA GALLERY  
AND ARIEL KAHANA - UNJUST ENRICHMENT**

71. Plaintiff repeats and realleges each of the allegations contained in paragraphs 1 - 70 above, as if fully set forth herein.

72. In the alternative, each of the Defendants against whom this Sixth Claim is asserted is liable to Zadik under the theory of unjust enrichment as alleged herein.

73. Zadik and Defendants shared a fiduciary relationship.

74. Defendants breached their fiduciary duties by removing or permitting the removal Zadik's paintings from the gallery without her consent.

75. Upon information and belief, Defendants breached their fiduciary duties by removing at least some of Zadik's paintings for their own personal use without Zadik's consent.

WHEREFORE, Plaintiff demands a trial by jury on all claims and prays that this Court enter judgment against Defendants, as follows:

A. Awarding compensatory damages against Agora and Kahana, jointly and severally, in the amount of \$198,000, plus prejudgment interest from the date Agora and Kahana first discarded and/or misappropriated the paintings, by removing them from the gallery;

B. Awarding punitive damages against each of the defendants in the amount of \$3.5 million;

C. Awarding plaintiff her reasonable attorneys' fees, costs and disbursements of this action; and

D. Granting plaintiff such other and further relief as the Court deems just and proper.

Dated: April 21, 2008

Respectfully submitted,  
Kaye Scholer LLP

By: Regina O. Kent

Regina O. Kent, Esq.  
Arlene Harris, Esq.  
425 Park Avenue  
New York, NY 10022  
(212) 836 - 7198

*Attorneys for Plaintiff, Ilana Dayan Zadik*

**EXHIBIT 1**



Date: 11/12/2004

Annual REPRESENTATION AGREEMENT  
Between Agora Gallery (WE) and (YOU), Diana Zadik, the

artist. Please sign and return within three weeks.

## 11. THE GALLERY'S RESPONSIBILITIES

## A. REPRESENTATION

- 1) ONE YEAR - Representation begins when we receive the signed representation agreement and requested material.
- 2) PORTFOLIO - We will keep your portfolio (slides, CD, or photographs) for promotional purposes. We will use reasonable efforts to return your portfolio to you at the end of our representation of you; however, you acknowledge that we are under no obligation to do so.
- 3) NON-EXCLUSIVE - The representation does not prevent exhibitions and sales by other galleries.
- 4) MUSEUMS - We will submit your portfolio to two museums when you inform us to do so in writing.
- 5) INSURANCE - Your artwork will be insured, while it is on our premises, to a maximum value of up to \$10,000 per artwork.
- 6) CV / BIOGRAPHY - You may include Agora Gallery's name on your CV / biography; however, you may not otherwise use our name without our prior written approval.

- 7) INTERNET - Our websites are visited by approximately 150,000 visitors per month. Agora-Gallery.com - images of your artwork and artist statement will be added to our Internet site approximately 1 month prior to your exhibition and will remain on our site for approximately 3 months. In addition, we will place images of your artwork within 6 weeks after your representation begins on Art-Mine.com. Special Exhibition catalogs remain on the Agora Gallery site for at least 6 months.

## B. EXHIBITION

- 1) EXHIBITION - You will participate in a collective exhibition for at least three weeks with the selected space option.
- 2) LOCATION - Your exhibition will take place in either our SoHo or Chelsea location - to be decided by Agora Gallery.

- 3) ADDITIONAL EXPOSURE: Following your exhibition, we may retain, with your permission, at least one of your artworks for a period of six (6) weeks for client presentations.
- 4) INSTALLATION - Our team of professional installers will handle the installation of your artwork.

S. PUBLICITY

- 1) Press release to be written for you by our public relations writers.
- 2) At least one display ad for the collective exhibition in an art publication of our choice, (i.e. Art in America, Art Spectrum, Gallery & Studio, NY Art).
- 3) Print and mail invitation cards for the exhibition. 50 cards will be mailed to you unless specified otherwise.
- 4) The exhibition will be announced in a NYC art magazine listing, (i.e. Gallery Guide, NY Magazine), and on our Internet site.
- 5) Mail your ads, listings etc. as they become available. If your exhibition is reviewed by an art publication we will mail a copy of the review to you.
- 6) Opening reception for the exhibition. We will mail approximately 1,500 post cards for the collective exhibition and e-mail at least 10,000 announcements.

## 12. REPRESENTATION FEE

Standard One Year Representation - Includes Services A-C  
With 10 linear feet of exhibition space  
Representation Fee ----- 6 x \$320 = \$3120  
Or 6 Payment Plan ----- 6 x \$320 = \$3120  
Representation Fee ----- \$5150  
Or 6 Payment Plan ----- 6 x \$325 = \$3150

Premium One Year Representation - Includes Services A-C with 40 linear feet of exhibition space, color Press Sheet, Individual color invitation card & 1 Secured Review in a New York Art Publication  
Representation Fee ----- \$9200  
Or 6 Payment Plan ----- 6 x \$1655 = \$9930

## 13. SALES

- 1) You may sell directly from your studio except to clients whom we have referred to you.
- 2) Neither you nor any of your other agents or representatives may quote prices, negotiate or sell any of your artwork while it is on our premises, or premises of any exhibition organized by us.
- 3) Your commission is 70% of the retail (list) price.
- 4) Commissions will be paid three (3) weeks after Agora Gallery receives payment for the sold artwork.

14. THE ARTIST'S RESPONSIBILITIES

- 1) You are responsible for all arrangements and cost of framing, initial packing, and shipping of your work to and from the gallery.
- 2) You agree to follow all our instructions regarding the various aspects of your exhibition.
- 3) You will supply us with a sufficient number of visuals as requested by us.

## 15. EXHIBITION SCHEDULING

- 1) Exhibitions are generally scheduled 4 to 6 months after representation begins in order to allow time for promotion, mailings, listings and advertising, unless you are either in a special exhibition or are making payments. If you have a preferred date for your exhibition, it is important that you provide us with a choice of at least three months to select from, in order for us to place your artwork in the most suitable exhibition for your work.
- 2) 16. PLEASE NOTE

  - 1) The fees you pay us may be a deductible business expense. Please consult with your accountant.
  - 2) Although we take every precaution in handling your portfolio, we are not responsible for full or partial loss or any damage - whatsoever - to your portfolio materials (slides/photos). Notwithstanding anything contained herein to the contrary, our maximum liability hereunder for any loss, damages, costs or expenses (including attorneys' fees) sustained by you shall be the insurance proceeds received and, in any event, not greater than \$10,000 in the aggregate for any such loss. In the event of any claim, dispute or litigation regarding this agreement, the parties consent to exclusive jurisdiction of the courts of the state of New York and New York law shall apply.
  - 3) Your artwork will be featured on our web sites, however we are not liable for any technical issues (downtime, etc.) arising in connection with the website that prevents the display of your artwork.
  - 4) We will notify you when to ship your artwork to the gallery. Please do not ship your artwork without our written approval.
  - 5) You represent and warrant to us that you are the sole owner of the copyright of your artwork and have not granted any rights to third parties that conflict with the rights granted here.
  - 6) In order to better serve you, please submit all requests and/or questions in writing.

Signature



## EXHIBIT 2

portfolio: Definition and much More from Answers.com - Microsoft Internet Explorer

http://www.answers.com/topic/portfolio&cat=bus-fin

**Answers.com™** portfolio

Business & Finance

Results for **portfolio**

On this page: Select Article

Dictionary: **portfolio** (part-of-speech: part-1)

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**Portfolios-and-Art-Cases.com**

*n., pl. -os.*

1.
  - a. A portable case for holding material, such as loose papers, photographs, or drawings.
  - b. The materials collected in such a case, especially when representative of a person's work: a photographer's portfolio; an artist's portfolio of drawings.
2. The office or post of a cabinet member or minister of state.
3. A group of investments held by an investor, investment company, or financial institution.

[Italian *portafoglio*: *porta-*, from *portare*, to carry, from Latin *portare* + *foglio*, sheet (from Latin *follum*, leaf).]

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**Tackle These**

- \* **1. Diversify your portfolio**
- \* **2. Construct a portfolio limiting your selections to mutual funds** assume that I sell my current....
- \* **If you make investment in investment portfolio and loan portfolio then what is the impact of ...**
- \* **Is a diversified portfolio with a beta of 2 twice**

start

### EXHIBIT 3

*Antonia Pereira*

Agora  
Gallery

SOHO • CHELSEA

NEW YORK CITY

212-226-4151 FAX 212-966-4380

WWW.AGORA-GALLERY.COM

WWW.ART-MINE.COM

**THIS FORM MUST BE SIGNED AND RETURNED  
TO SECURE YOUR UPCOMING EXHIBITION**

8/30/2005

Dear Ilana Dayan Zadik

We are pleased to inform you that your exhibit has been scheduled.

Title of Exhibition: **Period 11**

Exhibition Dates: **Friday, November 11, 2005 – Thursday, December 01, 2005**

Opening Reception: **Thursday, November 17, 2005, 6-8pm**

**Your artwork should be delivered on: Friday, November 04, 2005 (between) 11 AM - 5 PM**

**Your artwork should be delivered to: 530 West 25th st. 2nd floor, New York NY, 10001**

**Hand deliveries – artwork will be taken on: Saturday, December 03, 2005 (between) 11 AM-5 PM**

**Please note:** In order for us to hold a successful exhibition we must follow a strict timetable. We might need to remove you from the above exhibition if the forms are not returned by the deadline.

Please read and sign the attached forms and return them by **Tuesday, September 06, 2005**.

**Fax the signed forms to (212) 966-4380 or email back the scanned forms**

Enclosed is the **Framing Info. Sheet**. Please note that shipping your artwork either rolled or flat can prove to be very economical.

Thank You,  
Antonia Pereira  
Exhibition Coordinator

**I HEREBY CONFIRM MY PARTICIPATION IN THE UPCOMING EXHIBITION.**  
I understand that shipping of the artwork, to and from, the Gallery is my full responsibility. Even though Agora Gallery Inc. may help me with the return shipping of my artwork, it assumes no responsibility for any damage or loss, for any reason by any person or entity whatsoever. I understand that Agora Gallery, its employees, and assignees are not liable for any damage that may occur as a result of improper packing of the artwork: including, but, not limited to, damage which may occur to an artwork as a result of being rolled or from the stretching and/or unstretching of the artwork.

SIGNATURE *Ilana Dayan Zadik* DATE *09.09.05*

**PLEASE MAKE A PHOTOCOPY OF ALL THE FORMS FOR YOUR RECORDS**

*Antonia Peristeri*

## Shipping Information form

### Arriving artwork will be:

hand delivered  shipped to the gallery

Shipping Company will be (if shipped to the gallery)

UPS  DHL  FedEx  Other Dont know yet I will

inform you

### Unsold artwork will be:

Picked up by the artist,  Picked up by an authorized representative of the artist (fill attached form)  
 shipped to the gallery

Shipping Company will be (if shipped by the gallery)

UPS  DHL  FedEx  Other

I will inform you after

the company when I will decide

Insurance amount: \$ \_\_\_\_\_

Shipping Method:  Fastest  Most Economical

Name and Address \_\_\_\_\_

Zip code \_\_\_\_\_

Country \_\_\_\_\_

Telephone number \_\_\_\_\_

### It is your responsibility to pay for the shipping of your artwork.

Depending on the shipping company we will either charge your card for the expense and then pay the shipping company or we will pay the shipping company using your credit card

I authorize Agora Gallery to charge my credit card to all shipping related expenses as per the credit card holder agreement

Dont charge I will pay the shipping company  
Credit Card Type  Visa  MC  Amex  Discover in advance to pick up.

Credit Card #:

V-Code: \_\_\_\_\_ Exp. Date: my work  
 The V-Code is the last three digits on the signature line on the back of your credit card.

Or - Provide us with a shipper account number if you have one with the shipping company \_\_\_\_\_

### PLEASE NOTE THE FOLLOWING:

Agora Gallery is not responsible for your work while it is in transit, to or from the gallery, and in the hands of the shipping companies. Please arrange for insurance with your carrier. We will place insurance on the returned artwork for the amount indicated by you on this form.

Wooden crates are not allowed and will be refused without prior written authorization by the gallery.

Artwork must be picked up or shipped out after the exhibition. Artwork that remains at Agora Gallery after the retrieval date will not be insured and will be transferred to our storage facility located outside of the gallery. You will be responsible for any costs associated with the handling of artwork left at Agora Gallery after the retrieval date. This includes the transportation to off-premises storage and storage fees.

Artwork left for more than 45 days after the exhibition pick up date, without a written gallery authorization, will become property of Agora Gallery.

Please contact the Exhibitions Coordinator if you have any questions.

I have read and understood the above instructions

Name: JANA DAYAN ZADIK

Signature: J.D.

Date: 09.09.05

**Agora**  
Gallery

SOHO • CHELSEA

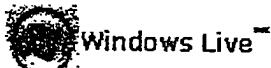
NEW YORK CITY

212-226-4151 FAX: 212-966-4350

WWW.AGORA-GALLERY.COM

WWW.ART-MINE.COM

EXHIBIT 4



## emails 2

From: noa1983 (noa1983@nana10.co.il)  
 Sent: Wed 9/19/07 5:36 PM  
 To: ilanadz@hotmail.com

מאת: noa1983@nana.co.il

בשליח: ג 21:47 17/01/2006

אל: Angela Di Bello

נושא: RE: ILANA DAYAN ZADIK

DEAR ANGELA

I AM SO HAPPY TO RECIEVE YOUR ANSWER THANK YOU SO VERY MUCH FOR YOUR CONSIDERATION  
 I AM SIMPLY AMAZED BY YOUR KINDNESS THANK YOU FOR UNDERSTANDING THE SITUATION I AM  
 IN . YOU ARE ALL VERY KIND . AS I SAID BEFORE I WILL TRY TO TRANSFER YOU THE MONEY THE  
 FIRST CHANCE I GET , YOU ARE MY FIRST PRIORITY

BEST REGARDS  
 ILANA DAYAN ZADIK

[Angela Di Bello [mailto:Angela@agora-gallery.com]

בשליח: ש 20:46 14/01/2006

אל: noa1983@nana.co.il

נושא: FW: ILANA DAYAN ZADIK

Dear Ilana,

I am sorry to learn that you are going through such a difficult time. Try to do what you can, it may just take a while. In the meantime we will continue to try and sell some of the paintings.

Best regards,

Angela Di Bello

---

From: noa1983 [mailto:noa1983@nana.co.il]  
 Sent: Tuesday, January 10, 2006 12:02 PM  
 To: angela@agora-gallery.com  
 Cc: AG@Agora-gallery.com  
 Subject: ILANA DAYAN ZADIK

**DEAR ANGELA**

EXHIBIT 5

Windows Live

**Insurance claim**

**From:** Ariel Kahana (ArielK@agora-gallery.com)  
**Sent:** Mon 8/20/07 3:24 PM  
**To:** ilanadz@hotmail.com  
**Cc:** Rosemary Speiser (Rosemary\_Speiser@asg.aon.com)

Dear Ilana Zadik Dayan,

I have filled a claim with my insurance carrier regarding the matter of your artwork and they will contact you soon.

Best regards,

Ariel Kahana

UNITED STATES DISTRICT COURT

Southern

District of

New York

ILANA DAYAN ZADIK

v.

AGORA GALLERY and ARIEL KAHANA

**SUMMONS IN A CIVIL ACTION**

CASE NUMBER:

TO: (Name and address of Defendant)

AGORA GALLERY  
530 West 25th Street, New York, NY 10001

ARIEL KAHANA  
733 Amsterdam Avenue, New York, NY 10025

**YOU ARE HEREBY SUMMONED** and required to serve on PLAINTIFF'S ATTORNEY (name and address)

KAYE SCHOLER LLP  
Regina O. Kent, Esq.  
Arlene Harris, Esq.  
425 Park Avenue  
New York, NY 10022

an answer to the complaint which is served on you with this summons, within 20 days after service of this summons on you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint. Any answer that you serve on the parties to this action must be filed with the Clerk of this Court within a reasonable period of time after service.

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CLERK

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DATE

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(By) DEPUTY CLERK

AO 440 (Rev. 8/01) Summons in a Civil Action

RETURN OF SERVICE		
Service of the Summons and complaint was made by me <sup>(1)</sup>	DATE	
NAME OF SERVER (PRINT)	TITLE	
<i>Check one box below to indicate appropriate method of service</i>		
<input type="checkbox"/> Served personally upon the defendant. Place where served:		
<input type="checkbox"/> Left copies thereof at the defendant's dwelling house or usual place of abode with a person of suitable age and discretion then residing therein. Name of person with whom the summons and complaint were left:		
<input type="checkbox"/> Returned unexecuted:		
<input type="checkbox"/> Other (specify):		
STATEMENT OF SERVICE FEES		
TRAVEL	SERVICES	TOTAL \$0.00
DECLARATION OF SERVER		
I declare under penalty of perjury under the laws of the United States of America that the foregoing information contained in the Return of Service and Statement of Service Fees is true and correct.		
Executed on _____	Date _____	<i>Signature of Server</i> _____
<small><i>Address of Server</i></small> _____		

<sup>(1)</sup> As to who may serve a summons see Rule 4 of the Federal Rules of Civil Procedure.

JS 44C/SDNY  
REV. 12/2005

## CIVIL COVER SHEET

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for use of the Clerk of Court for the purpose of initiating the civil docket sheet.

## PLAINTIFFS

ILANA DAYAN ZADIK

## DEFENDANTS

AGORA GALLERY 530 West 25th Street, NY, NY 10001  
ARIEL KAHANA 733 Amsterdam Avenue, NY, NY 10025

## ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)

KAYE SCHOLER LLP 425 Park Avenue NY, NY 10022  
(212) 836-8000

## ATTORNEYS (IF KNOWN)

Regina O. Kent, Esq.  
Arlene Harris, Esq.

## CAUSE OF ACTION (CITE THE U.S. CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE A BRIEF STATEMENT OF CAUSE)

This breach of contract action is being filed pursuant to 28 USC 1332(a); the action is between a citizen and resident of Israel, and citizens of the State of New York and companies incorporated in or doing business in the State of New York.

Has this or a similar case been previously filed in SDNY at any time? No  Yes?  Judge Previously Assigned

If yes, was this case Vol.  Invol.  Dismissed. No  Yes  If yes, give date \_\_\_\_\_ & Case No. \_\_\_\_\_

## (PLACE AN [x] IN ONE BOX ONLY)

## NATURE OF SUIT

## ACTIONS UNDER STATUTES

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 INSURANCE	<input type="checkbox"/> 310 AIRPLANE	<input type="checkbox"/> 610 PERSONAL INJURY	<input type="checkbox"/> 422 APPEAL	<input type="checkbox"/> 400 STATE REAPPORTIONMENT
<input type="checkbox"/> 120 MARINE	<input type="checkbox"/> 315 AIRPLANE PRODUCT LIABILITY	<input type="checkbox"/> 620 MED MALPRACTICE	<input type="checkbox"/> 28 USC 158	<input type="checkbox"/> 410 ANTITRUST
<input type="checkbox"/> 130 MILLER ACT	<input type="checkbox"/> 320 ASSAULT, LIBEL & SLANDER	<input type="checkbox"/> 625 PRODUCT LIABILITY	<input type="checkbox"/> 423 WITHDRAWAL	<input type="checkbox"/> 430 BANKS & BANKING
<input type="checkbox"/> 140 NEGOTIABLE INSTRUMENT	<input type="checkbox"/> 330 FEDERAL EMPLOYERS' LIABILITY	<input type="checkbox"/> 630 ASBESTOS PERSONAL INJURY PRODUCT LIABILITY	<input type="checkbox"/> 28 USC 157	<input type="checkbox"/> 450 COMMERCE/ICC RATES/ETC
<input type="checkbox"/> 150 RECOVERY OF OVERPAYMENT & ENFORCEMENT OF JUDGMENT	<input type="checkbox"/> 340 MARINE PRODUCT LIABILITY	<input type="checkbox"/> 640 LIQUOR LAWS	<input type="checkbox"/> PROPERTY RIGHTS	<input type="checkbox"/> 460 DEPORTATION
<input type="checkbox"/> 151 MEDICARE ACT	<input type="checkbox"/> 345 MARINE PRODUCT LIABILITY	<input type="checkbox"/> 640 RR & TRUCK LIABILITY	<input type="checkbox"/> 820 COPYRIGHTS	<input type="checkbox"/> 470 RACKETEER INFLUENCED & CORRUPT ORGANIZATION ACT (RICO)
<input type="checkbox"/> 152 RECOVERY OF DEFANTED STUDENT LOANS (EXCL VETERANS)	<input type="checkbox"/> 350 MOTOR VEHICLE	<input type="checkbox"/> 650 AIRLINE REGS	<input type="checkbox"/> 830 PATENT	<input type="checkbox"/> 480 CONSUMER CREDIT
<input type="checkbox"/> 153 RECOVERY OF OVERPAYMENT OF VETERANS BENEFITS	<input type="checkbox"/> 355 MOTOR VEHICLE PRODUCT LIABILITY	<input type="checkbox"/> 660 OCCUPATIONAL SAFETY/HEALTH	<input type="checkbox"/> 840 TRADEMARK	<input type="checkbox"/> 490 CABLE/SATELLITE TV
<input type="checkbox"/> 160 STOCKHOLDERS SUITS	<input type="checkbox"/> 360 OTHER PERSONAL INJURY	<input type="checkbox"/> 690 OTHER	<input type="checkbox"/> SOCIAL SECURITY	<input type="checkbox"/> 810 SELECTIVE SERVICE
<input checked="" type="checkbox"/> 190 OTHER CONTRACT	<input type="checkbox"/> 385 PROPERTY DAMAGE PRODUCT LIABILITY	<input type="checkbox"/> 710 FAIR LABOR STANDARDS ACT	<input type="checkbox"/> 850 SECURITIES/ COMMODITIES/ EXCHANGE	<input type="checkbox"/> 850 SECURITIES/ COMMODITIES/ EXCHANGE
<input type="checkbox"/> 195 CONTRACT PRODUCT LIABILITY	<input type="checkbox"/> 386 PROPERTY DAMAGE PRODUCT LIABILITY	<input type="checkbox"/> 720 LABOR/MGMT STANDARDS ACT	<input type="checkbox"/> 861 MIA (1395FF)	<input type="checkbox"/> 875 CUSTOMER CHALLENGE
<input type="checkbox"/> 196 FRANCHISE	<input type="checkbox"/> 387 PROPERTY DAMAGE PRODUCT LIABILITY	<input type="checkbox"/> 730 LABOR/MGMT RELATIONS	<input type="checkbox"/> 862 BLACK LUNG (923)	<input type="checkbox"/> 12 USC 3410
	<input type="checkbox"/> ACTIONS UNDER STATUTES	<input type="checkbox"/> 740 DISCLOSURE ACT	<input type="checkbox"/> 863 DIWW (405(g))	<input type="checkbox"/> 891 AGRICULTURE ACTS
	<input type="checkbox"/> REAL PROPERTY	<input type="checkbox"/> 750 OTHER LABOR LITIGATION	<input type="checkbox"/> 864 SSID TITLE XVI	<input type="checkbox"/> 892 ECONOMIC STABILIZATION ACT
	<input type="checkbox"/> CIVIL RIGHTS	<input type="checkbox"/> 760 EMPL. RET. INC SECURITY ACT	<input type="checkbox"/> 865 RSI (405(g))	<input type="checkbox"/> 893 ENVIRONMENTAL MATTERS
	<input type="checkbox"/> PRISONER PETITIONS	<input type="checkbox"/> 790 TAXES	<input type="checkbox"/> 870 TAXES	<input type="checkbox"/> 894 ENERGY ALLOCATION ACT
		<input type="checkbox"/> 791 IRS-THIRD PARTY SECURITY ACT	<input type="checkbox"/> 871 20 USC 7609	<input type="checkbox"/> 895 FREEDOM OF INFORMATION ACT
				<input type="checkbox"/> 900 APPEAL OF FEE DETERMINATION UNDER EQUAL ACCESS TO JUSTICE
				<input type="checkbox"/> 950 CONSTITUTIONALITY OF STATE STATUTES
				<input type="checkbox"/> 890 OTHER STATUTORY ACTIONS

Check if demanded in complaint:

CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DO YOU CLAIM THIS CASE IS RELATED TO A CIVIL CASE NOW PENDING IN S.D.N.Y.? IF SO, STATE:

DEMAND \$ \_\_\_\_\_ OTHER \_\_\_\_\_ JUDGE \_\_\_\_\_ DOCKET NUMBER \_\_\_\_\_

Check YES only if demanded in complaint  
JURY DEMAND:  YES  NO

NOTE: Please submit at the time of filing an explanation of why cases are deemed related.

(PLACE AN *x* IN ONE BOX ONLY)

## ORIGIN

1 Original Proceeding     2a. Removed from  3 Remanded from  4 Reinstated or Reopened     5 Transferred from  6 Multidistrict Litigation     7 Appeal to District Judge from Magistrate Judge Judgment

2b. Removed from State Court

AND at least one party is a pro se litigant

(PLACE AN *x* IN ONE BOX ONLY)

## BASIS OF JURISDICTION

IF DIVERSITY, INDICATE CITIZENSHIP BELOW.  
(28 USC 1332, 1441)

1 U.S. PLAINTIFF     2 U.S. DEFENDANT     3 FEDERAL QUESTION     4 DIVERSITY  
(U.S. NOT A PARTY)

## CITIZENSHIP OF PRINCIPAL PARTIES (FOR DIVERSITY CASES ONLY)

(Place an *X* in one box for Plaintiff and one box for Defendant)

CITIZEN OF THIS STATE	PTF <input type="checkbox"/> 11 <input checked="" type="checkbox"/> 1	DEF	CITIZEN OR SUBJECT OF A FOREIGN COUNTRY	PTF <input checked="" type="checkbox"/> 3 <input type="checkbox"/> 13	DEF	INCORPORATED <u>and</u> PRINCIPAL PLACE OF BUSINESS IN ANOTHER STATE	PTF <input type="checkbox"/> 15 <input type="checkbox"/> 15	DEF
CITIZEN OF ANOTHER STATE	<input type="checkbox"/> 12	<input type="checkbox"/> 12	INCORPORATED <u>or</u> PRINCIPAL PLACE OF BUSINESS IN THIS STATE	<input type="checkbox"/> 14	<input checked="" type="checkbox"/> 14	FOREIGN NATION	<input type="checkbox"/> 16	<input type="checkbox"/> 16

## PLAINTIFF(S) ADDRESS(ES) AND COUNTY(IES)

ILANA DAYAN ZADIK  
Ruth 25, Haifa,  
Israel, 34404

## DEFENDANT(S) ADDRESS(ES) AND COUNTY(IES)

AGORA GALLERY  
530 West 25th Street, New York, NY 10001

and

ARIEL KAHANA  
733 Amsterdam Avenue, New York, NY 10025

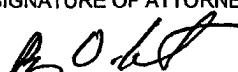
## DEFENDANT(S) ADDRESS UNKNOWN

REPRESENTATION IS HEREBY MADE THAT, AT THIS TIME, I HAVE BEEN UNABLE, WITH REASONABLE DILIGENCE, TO ASCERTAIN THE RESIDENCE ADDRESSES OF THE FOLLOWING DEFENDANTS:

Check one: THIS ACTION SHOULD BE ASSIGNED TO:  WHITE PLAINS  FOLEY SQUARE  
(DO NOT check either box if this a PRISONER PETITION.)

DATE SIGNATURE OF ATTORNEY OF RECORD

April 21, 2008



ADMITTED TO PRACTICE IN THIS DISTRICT

 NO YES (DATE ADMITTED Mo. Feb Yr. 2005)  
Attorney Bar Code #

RECEIPT #

Magistrate Judge is to be designated by the Clerk of the Court.

Magistrate Judge \_\_\_\_\_ is so Designated.

J Michael McMahon, Clerk of Court by \_\_\_\_\_ Deputy Clerk, DATED \_\_\_\_\_.

UNITED STATES DISTRICT COURT (NEW YORK SOUTHERN)